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Of Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

**DR. RUPA BALA,**

Plaintiff,

v.

**OREGON HEALTH AND SCIENCE  
UNIVERSITY, an Oregon public corporation;  
DR. CHARLES HENRIKSON, an individual;  
DR. JOAQUIN CIGARROA, an individual.**

Defendants.

**CASE NO. 3:18-CV-00850-HZ**

**PLAINTIFF'S SUPPLEMENTAL  
AUTHORITIES RE: EQUAL  
PROTECTION CLAIM**

The Court has determined that the Defendants discriminatory references are not an adverse action under the Equal Protection Clause. The Court should reconsider this decision based upon the authorities cited herein. While Title VII and ORS 659A.030 may be limited to discrimination in the “terms and conditions” of employment, the Equal Protection Clause is not so limited. To establish an Equal Protection Clause violation a plaintiff needs to establish that “a

discriminatory reason for likely than not motivated the defendant and the defendant's actions adversely affected the plaintiff *in some way*." *Ballou v McElvain*, 29 F4th 413, 422 (2022)(Emphasis added). The central inquiry is whether an "invidious discriminatory purpose was a motivating factor in some government action." *Ballou, supra* 29 F4th at 422, quoting *Ave. 6E Invs., LLC v City of Yuma*, 818 F3d 493, 504 (9<sup>th</sup> Cir 2016). It is well established that the Equal Protection Clause "prohibits state actors from engaging in intentional conduct designed to impede a person's career advancement based upon gender." *Lindsey v Shalmy*, 29 F3d 1382, 1385 (9<sup>th</sup> Cir. 1994). The individual Defendants discriminatory references are "some government action" that "adversely affects the plaintiff in some way"; and are conduct designed to impede a person's career advancement. Under *Lindsey*, *City of Yuma* and *Ballou*, they are adverse actions under the Equal Protection Clause.

A plaintiff in an Equal Protection case may recover traditional tort damages including damages for impairment of earning capacity. *Memphis Cmty School District v Stachura*, 477 US 299, 307 (1986)(damages for constitutional deprivations include out of pocket loss and other monetary harms, impairment of earning capacity and mental and emotional distress. Based upon *Ballou*, *Lindsey*, *City of Yuma* and *Stachura*, Defendants improper post-termination references should be included as adverse actions on the Equal Protection claim.

DATED, this 23<sup>rd</sup> day of April, 2024

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